

1 Thomas Tosdal SBN 67834
Tosdal Law Firm APC
2 777 S. Highway 101, Ste. 215
Solana Beach, CA 92075
3 Tel.: (858) 704-4709
Email: tom@tosdallaw.com
4 Fax: (888) 740-3859

5 Michael S. Feinberg SBN 81867
41911 Fifth Street, Ste. 300
6 Temecula, CA 92590
Tel.: (951) 698-9900
7 Email: feinberg@feinbergfitchlaw.com
Fax: (951) 698-9909

8 Angela Jae Chun SBN 248571
9 Law Office of Angela Jae Chun
777 S. Highway 101, Ste. 215
10 Solana Beach, CA 92075
Tel.: (619) 719-5757
11 Email: ajc@chun.law

12 David S. Casey, Jr. SBN 60768
James Davis SBN 301636
13 Casey Gerry Schenk Francavilla
Blatt & Penfield, LLP
14 110 Laurel St.
San Diego, CA 92101
15 Tel: (619) 238-1811
Fax: (619) 544-9232
16 Email: dcasey@cglaw.com
Email: jdavis@cglaw.com

17 **UNITED STATES BANKRUPTCY COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**
20

21 In Re:
22 PG&E CORPORATION
23 and
24 PACIFIC GAS & ELECTRIC COMPANY,
25 Debtors.

26 ☐ Affects PG&E Corporation
27 ☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

28 **All papers shall be filed in the Lead Case No.
19-30088 (DM)*

Bankr. Case No. 19-30088-DM

**GARRISON OBJECTION TO
PROPOSED REORGANIZATION PLAN**

Date: May 27, 2020

Time: 10:00 a.m.

Place: U.S. Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

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1. Objection to the Proposed Plan

Patricia Garrison, a Fire Victim claimant, objects to the Debtor's and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization (the "Proposed Plan") under 11 U.S.C. sections 1122(a), 1123(a)(4), 1129(a)(1) and 1129(a)(3) on the grounds the Proposed Plan puts substantially similar claims in separate classes without justification and has not been proposed in good faith. In particular, no legitimate reason exists for the substantially similar claims of Fire Victims, Subrogation claimants, and Public Entities to be placed in separate classes, as all claims are disputed, contingent, and unliquidated claims for monetary damages arising from the same PG&E fires. The Proposed Plan does not deal with creditors such as Ms. Garrison in a "fundamentally fair manner," as courts have construed the "good faith" requirement in 11 U.S.C. section 1129(a)(3). As such, each of these three sets of claims should be classified in the same class, and all claimants in the class must be provided "the same treatment" in terms of proportion of cash and stock relative to the various funds allocated to them as required by 11 U.S.C. section 1123(a)(4). This objection does not challenge the total amounts allowed to the Public Entities, Subrogation claimants, and Fire Victims. Rather, this objection challenges the separate classifications resulting in less favorable treatment to Fire Victim claimants because they are forced to take stock and are therefore exposed to risk not shared by similar classes.

2. Name and Address of Objector

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Patricia Garrison
545 Wirths Way
Paradise, California 95969

3. Nature of Claim of Patricia Garrison and Right to Object to the Proposed Plan

Patricia Garrison is a long-time resident of Paradise, California. Now retired, Ms. Garrison spent her professional life as an educator, most recently serving as principal of an elementary school in Oroville, California. On November 8, 2018, the Camp Fire destroyed her home and possessions as well as the entire Town of Paradise. Twenty-five members of her extended family lost their homes and possessions in the fire. Ms. Garrison and her husband were away from Paradise when the fire occurred. During the fire, their daughter called them to say “good-bye,” as she was trapped in the flames and believed she was going to die. Fortunately, their daughter made it out of the flames alive. Presently, Ms. Garrison and her husband live in a 400 sq. ft. apartment in a barn in Paradise, far smaller than the 2,100 sq. ft. house they formerly lived in.

Ms. Garrison timely filed a proof of claim, numbered ARM#!27397. Ms. Garrison, as a party in interest, has standing to object to the Proposed Plan. (11 U.S.C. section 1324(a).)

4. The Claims are Substantially Similar

The Proposed Plan itself establishes the substantial similarity of the claims. “Fires” is defined as “the fires that occurred in Northern California, listed on Exhibit A annexed hereto.” (Proposed Plan 1.86.) A “Fire Claim means any Claim against the Debtors in any way arising out of the Fires...” (Proposed Plan 1.78.)

A “Public Entities Wildfire Claim” is any Fire Claim against the Debtors made in complaints by certain public entities. (Proposed Plan 1.167; 1.174.) A “Subrogation Wildfire Claim” is any Fire Claim (except 2015 Butte Fire claim) that arises from subrogation, assignment, or otherwise in connection with payments made or to be made by an insurer to insured tort victims. (Proposed Plan 1.201.) And a “Fire Victim Claim” is any

1 Fire Claim that is not a Public Entities Wildfire Claim, Subrogation Wildfire Claim, or
2 Subrogation Butte Fire Claim. (Proposed Plan 1.79.)

3 All of these claims are disputed, contingent, and unliquidated, and arise from
4 damages arising from the same PG&E fires. The Public Utilities claims are based in
5 statutory and common law tort, as are the Fire Victim claims. The Subrogation claims are
6 derivative of the Public Utilities and Fire Victim claims in the sense that insurers are
7 subrogated to their insureds' claims to the extent the insurers make payments to their
8 insureds for fire losses. The claims are substantially similar in legal nature, character and
9 effect. In Re Dow Corning Corporation, 244 B.R. 634, 644, 658 (Bk E.D. Mich. 1999),
10 affirmed 255 B.R. 445 (E.D. Mich. 2000), affirmed in relevant part 280 F. 3d 648 (2002).
11
12

13 The claims are substantially similar to each other.

14 **5. The Proposed Plan Separately Classifies the Claims Into Six Classes**

15 A reorganization plan must place substantially similar claims in the same class
16 absent "a legitimate business or economic reason." In re Barakat, 99 F.3d 1520, 1523, 1528-9
17 (9th Cir. 1996). Yet the Proposed Plan creates six separate classes for these claims, with
18 three claims – the Public Entities Wildfire Claims, the Subrogation Wildfire Claims, and
19 Fire Victims Claims – that are substantially similar:
20
21

22 Class 5A-I HoldCo Public Entities Wildfire Claims

23 Class 5A-II HoldCo Subrogation Wildfire Claims

24 Class 5A-III HoldCo Fire Victim Claims

25 Class 5B-I Utility Public Entities Wildfire Claims

26 Class 5B-II Utility Subrogation Wildfire Claims

27 Class 5B-III Utility Fire Victim Claims
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(Proposed Plan 3.2.)

The Public Entities classes consist of 19 public entity claimants. (Disclosure Statement p. 9 n. 1, Doc. 6353.) But not all public entities claiming against PG&E are included; some public entities are in the Fire Victims classes. The Subrogation classes include all entities claiming insurance subrogation rights, either as insurers making payments to fire victims or purchasers of subrogation claims on the secondary market. The exact number of Subrogation claimants is not known to the undersigned, but The Ad Hoc Group of Subrogation Claim Holders consists of 120 entities which hold about 85% of all subrogation claims. (Sixth Amended Verified Statement of the Ad Hoc Group of Subrogation Claim Holders, Doc. 5907.) By definition, the Fire Victims classes include all other claimants of every description for fire damages – public entities, individuals, businesses, farmers, and non-profits. There are over 70,000 Fire Victim claims on file.

6. The Classes Are Not Treated the Same in Terms of Proportion of Cash and Stock

The Proposed Plan treats the HoldCo and Utility claims the same for each set of proposed classes. The Public Entities claims are allowed one billion dollars cash and no stock, payable on the effective date of the Proposed Plan. (Proposed Plan 4.5(a), 4.24.) The Subrogation Wildfire Claims are allowed \$11 billion dollars cash and no stock, payable on the effective date of the Proposed Plan. (Proposed Plan 4.6(a), 4.25.)

The Fire Victims get far less favorable treatment both in terms of proportion of cash and times of payment. The Fire Victims are allowed: (a) \$5.4 billion cash payable on the effective date; (b) a cash payment of \$650 million on January 15, 2021, payable under a Tax Benefits Payment Agreement; (c) a cash payment of \$700 million on January 15, 2022, payable under a Tax Benefits Payment Agreement; and (d) \$6.75 billion in new HoldCo

1 stock, valued by a formula rather than market value at the time of transfer. (Proposed Plan
2 1.6, 4.7, 4.26.) The stock is problematical, because after transfer to the Fire Victims Trust it
3 will be subject to devaluation by market conditions, early sale of stock by existing
4 investors, and the prospect of another catastrophic PG&E fire in the coming fire season.

5
6 If all claims were in the same class, the less favorable treatment of Fire Victims
7 claims compared to Public Entities and Subrogation claims would not pass muster under
8 11 U.S.C. section 1123(a)(4). In order to comply with section 1123(a)(4), all claimants would
9 need to receive the same proportion of cash and stock relative to the total amounts allowed
10 them, to be paid at the same time.

11 12 **7. No Legitimate Reason Exists For Separately Classifying The Claims**

13 As noted, a reorganization plan cannot separately classify substantially similar
14 claims absent “a legitimate business or economic reason.” In re Barakat, 99 F.3d at 1528-9;
15 accord In re Rexford Properties LLC, 558 B.R. 352, 363 (Bkrtcy. C.D. Cal. 2016) (“Ninth
16 Circuit law requires a ‘legitimate business or economic justification’ for separate
17 classification of substantially similar claims); see also In re Chateaugay, 89 F.3d 942, 949 (2d
18 Cir. 1996) (“similar claims may be classified separately only for a legitimate reason.”) To
19 warrant having separate classification of similar claims, “the debtor must advance a
20 legitimate reason supported by credible proof.” Id.

21
22 The separate classification of Subrogation and Fire Victims makes no sense given
23 that subrogation claims are derivative of and subordinate to the claims of their insureds as
24 a matter of law. See In re Hamada, 291 F.3d 645, 649 (9th Cir. 2002); Fireman’s Fund Ins. Co.
25 v. Maryland Cas. Co., 65 Cal.App.4th 296, 303 (1998) (“The right of subrogation is purely
26 derivative.”) And the separate treatment of Subrogation Claims with all cash as opposed
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to cash and stock for Fire Victims lacks legitimacy because the apparent reason Subrogation is getting all cash is that the separate classification of Subrogation is a device for profit making by existing investors in PG&E. PG&E institutional investors stand to make billions of dollars in profit on the effective date of the Proposed Plan when the Fire Victims will be saddled with cash payments over two years and the risk of devalued stock. This chart reveals publicly available information about the holdings of members of the Subrogation AD Hoc Group who are also PG&E investors.

Investor	PG&E holdings (largest)	Subrogation claim holdings
The Baupost Group LLC	16,062,643 shares common stock	\$6,779,029,346
Sixth Street Partners LLC	1,000,000 shares common stock \$152,124,000 senior notes	\$851,789,253
Attestor Capital LLP	7,488,514 shares common stock	\$834,743,084
Centerbridge Partners LP	\$281,979,000 utility bonds 1,450,000 shares common stock	\$208,703,491
Strategic Value Partners LLC	\$118,250,000 senior notes	\$132,030,617
Deutsche Bank Securities Inc.	717,000 shares stock	\$130,041,997
Appollo Global Management LLC	\$505,996,000 senior notes	\$98,000,000
Silver Point Capital LP	24,937 common shares \$287,937,630 utility bonds	\$76,200,175
Abrams Capital Management LP	25,000,000 common shares	\$72,302,208
Owl Creek Asset Management L.P.	7,282,840 common shares	\$24,008,927
Redwood Capital Management LLC	12,333,752 common shares	\$9,869,354
		\$9,216,718,452

Sources: Sixth Amended Verified Statement of Subrogation Claim Holders Pursuant to Bankruptcy Rule 2019 (Doc. 5907); Fifth Amended Verified Statement of Jones Day Pursuant to Rule of Bankruptcy Procedure 2019 (Doc. 5142); First Amended Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to Bankruptcy Rule 2019 (Doc. 5060).

The purchase price of subrogation claims on the secondary market is not public information. However, a Wall Street Journal article published on September 13, 2019,

1 reported Baupost, a substantial investor in PG&E and the largest holder of subrogation
2 claims, purchased subrogation claims at 30 to 35 cents on the dollar.
3 ([www.wsj.com/articles/klarmans-baupost-poised-to-cash-in-on-pg-e-insurance-bet-](http://www.wsj.com/articles/klarmans-baupost-poised-to-cash-in-on-pg-e-insurance-bet-11568387840)
4 [11568387840](http://www.wsj.com/articles/klarmans-baupost-poised-to-cash-in-on-pg-e-insurance-bet-11568387840).) With purchase prices in this range, institutional investors stand to make
5 billions of dollars in profits off this bankruptcy on the backs of fire victims, who are forced
6 to take risky stock instead of cash.
7

8 No legitimate business reason exists for separately classifying the claims.
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10 **8. The Classes Should Be Treated Fairly and Equally In Terms Of Proportion of**
11 **Cash And Stock Allocations**

12 Courts have construed the “good faith” requirement in 11 U.S.C. section 1129(a)(3)
13 to require reorganizations plans treat creditors “in a fundamentally fair manner.” See In re
14 Marshall, 298 B.R. 670, 675-76 (Bkrtcy. C.D. Cal. 2003) (“Part of the good faith analysis is
15 that the plan must deal with the creditors in a fundamentally fair manner.”) Ms. Garrison
16 respectfully proposes that the reorganization plan comply with the “good faith”
17 requirement by allocating cash and stock equally in proportion relative to the total
18 amounts allowed the Public Entities, Subrogation Wildfire, and Fire Victims respectively,
19 so the benefits of receiving cash and the risks in receiving proceeds from the sale of stock
20 are shared mutually.
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22 Rather than allocating \$6.75 billion in stock for the Fire Victims – equaling 50% of
23 the funds available to these claimants – fair treatment requires an equal allocation of stock
24 and cash among the claims by the Public Entities, Subrogation Wildfire, and Fire Victims,
25 with the percentage of stock arriving at approximately 26% to 27% for each of the three
26 funds.
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